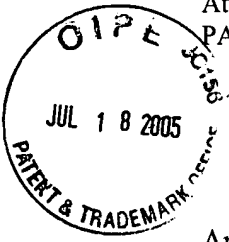


JUL 18 2005

AF/3636
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Attorney Docket No: 20341-68796
PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James M. KAIN Confirmation No. 6018
Serial No.: 10/032,633 Art Unit: 3636
Filed: October 19, 2001 Examiner: Erika P. Garrett
For: JUVENILE SEAT CUP HOLDER

REQUEST TO REINSTATE THE APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant hereby appeals to the Board of Patent Appeals and Interferences from the decision of the primary examiner mailed April 25, 2005 rejecting Claims 1-17.

The fee under 37 C.F.R. §1.17(b) was paid with the appeal papers filed November 12, 2003.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341/68796).

Respectfully submitted,
BARNES & THORNBURG

A handwritten signature in cursive script, reading "Richard B. Lazarus".

Richard B. Lazarus
Registration No. 48,215
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JUL 18 2005

Attorney Docket No: 20341-68796
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	James M. KAIN	Conf. No.:	6018
Serial No.:	10/032,633	Art Unit:	3636
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For:	JUVENILE SEAT CUP HOLDER		

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Below is an Appeal Brief in support of an appeal taken from the Rejection of Claims 1-17, mailed April 25, 2005. A Request to Reinstate the Appeal accompanies this Appeal Brief.

1. Real party in interest. All rights in this application have been assigned to Cosco Management, Inc., a corporation existing under the laws of the state of Delaware.

2. Related appeals and interferences. Appellant and undersigned counsel for appellant know of no appeals or interferences related to the present application on appeal.

3. Status of Claims. The application contains Claims 1-17. Claims 1-17 have been rejected under 35 U.S.C. 103(a) as unpatentable over Gignac et al. (U.S. Patent 5,248,183) in view of Maule (U.S. Patent No. 5,516,194). It is noted that the rejection at form PTOL-326 box 6 states that claim 1-17 are rejected, but the body of the office action pages (2-12) do not specifically apply the prior art to claim 8. Nevertheless, appellant assumes the rejection of unpatentability over Gignac et al. in view of Maule is applicable to claim 8.

4. Status of Amendments. An amendment to the paragraph beginning at page 3, line 26 of the specification accompanies this appeal and appeal brief. The amendment adds a reference to posts 50,52 and respective openings 56,58 constituting respective hinge portions as seen in, for example, Fig. 4. This amendment is in response to the objection to claim 15 and the

drawings for failing to show the hinge portions recited in claim 15. All other amendments have been entered.

5. Summary of the Claimed Subject Matter. Each of independent claims 1, 2, 4 and 5 recite a juvenile seat comprising base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant, the base having, on at least one of the sides, an upstanding side wall having a cavity facing outwardly away from the seating surface and a cup holder. The specification at page 3, first paragraph refers to FIG. 1 and describes a juvenile seat 10 includes a base 12 to be placed upon a vehicle seat or other surface (not shown), the base including a front 18, rear 20, and opposite sides 22.

Claims 1, 2, 4 and 5 begin by reciting the cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity. As described at page 3, third paragraph, cup holder 28 is pivotably coupled to base 12 and movable between a closed position as shown in FIG. 1 and an opened position as shown in FIG. 2.

Each of claims 1, 2, 4 and 5 recite aspects of the cupholder. For example, claim 1 recites the cup holder shell outer surface merges with the upstanding side wall to form an exterior surface of the base and an opened position extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall; claim 2 recites a cup holder opened position extending from the base in which the cup retainer is open upwardly, wherein the base provides first and second posts extending into the cavity; claim 4 recites an opened position extending from the base in which the cup retainer is open upwardly, wherein the outer shell surface has a convex shape, the upstanding side wall has a convex shape, and the outer shell surface cooperates with the side wall to continue the convex shape of the side wall to form a smooth convex shape when the cup holder is in the closed position; and claim 5 recites an opened position extending from the base in which the cup retainer is open upwardly, wherein at least one of the base or the cup holder includes a detent to engage a recess provided by the other of the cup holder or the base to prevent free movement of the cup holder from the closed position. The convex shape is shown in, for example, Fig. 1; the specification at, for example, page 3, last several lines, describes

as shown in FIG. 4, a first post 50 extends from first interior wall 32 into cavity 30 and a second post 52 extends from second interior wall 34 into cavity 30 and toward the first post. First and second posts 50, 52 cooperate to define a cup

holder pivot axis 54. First connector portion 46 of shell 38 includes a first post opening 56 sized to receive first post 50 therein. Second connector portion 48 of shell 38 includes a second post opening 58 sized to receive second post 52 therein[;]

and the detents and recesses are described in the specification at, for example page 4, last few lines, which states

When cup holder 28 is in the closed position, each detent 67 engages one of the recesses 68, preventing free rotation of cup holder 28 about axis 54. When a user applies a force to lower portion 62, detents 67 disengage recesses 68 and permit the user to move the cup holder from the closed position.

In independent claim 6 the cup holder outer surface merges with the upstanding side wall to form an exterior surface of the base and there is described an opened position wherein the cup retainer extends from the base and faces upwardly and the outer surface is separated from the upstanding side wall.

In independent claim 8 it is stated the cup holder being coupled to the base to pivot between a closed position wherein the cup retainer is positioned in the cavity and an opened position wherein the cup retainer extends from the base and faces upwardly and wherein one of the base or the cup holder includes a post and the other of the base or the side wall includes a post opening to receive the post to permit pivoting movement of the cup holder relative to the base.

Independent claim 9 states the cup holder being coupled to the base to pivot between a closed position wherein the cup retainer is positioned in the cavity and an opened position wherein the cup retainer extends from the base and faces upwardly and wherein the base includes an upstanding side wall having an outwardly facing wall, the outwardly facing wall including opposing interior walls extending toward the other side of the base, each interior wall including a post extending into the cavity, the cup holder being pivotably coupled to the posts.

In independent claim 11 there is recited a cup holder having a shell and a cup retainer coupled to the shell, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position placing the shell alongside said one of the sides of the booster seat and preventing access to the cup retainer and an opened position permitting access to the cup retainer.

Independent claim 15 recites a cup holder having a shell and a cup retainer, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer, wherein the shell includes a first hinge portion, and the side to which the cup holder is coupled includes a second hinge portion, the coupling between the cup holder and the one of the sides being provided by the hinge portions.

Independent claim 17 states a cup holder having a shell and a cup retainer, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer, wherein the shell includes an outer shell surface and an inner shell surface, and the side to which the cup holder is coupled includes a support edge to contact a portion of the outer shell surface to support the cup holder in the opened position, the support edge having a shape to match the shape of the portion of the outer shell surface so contacted.

6. Issues on appeal. Whether Claims 1-17 are obvious under 35 U.S.C. §103 over Gignac et al. in view of Maule

7. Grouping of Claims. Claims 5 and 6 stand or fall with claim 1. Each of Claims 2-4 and 7-17 stand or fall separately.

8. Copy of the Claims. A copy of the Claims on appeal is attached to this brief as an Appendix.

9. Argument.

The Prior Art

Gignac et al. discloses a swing out container holder provided as part of a vehicle armrest or console. As seen in Figs. 1-3 assembly 10 generally comprises housing means 12 forming an armrest or console which is secured to a vehicle for use by passengers. Gignac et al discloses

The housing means 12 includes an upper, flat surface 24 for supporting the arm of the passenger, side surfaces 25, 27 and a lower, flat surface 26 for placement adjacent the vehicle, i.e., resting on the seats 13 of the vehicle. A front surface 28 interconnects the upper surface 24 with the lower surface 26. The assembly 10 may be fixedly secured to vehicle seats 13 as an armrest assembly, or it may be part of a console or it can be part of an instrument panel housing all as commonly known in the art. (See column 2, lines 46-55).

Maule discloses assembly 12 “assembly 12 is composed of an upper portion 30 and a lower portion 32. The portions 30, 32 are pivotably joined at pivot 34” (column 5, lines 65-67) and wherein “upper portion 30 includes a top side 35 which provides the driver or passenger with an armrest surface and a bottom side 36” (column 6, lines 1-3).

When the assembly 12 is in the operable position on the front seat as shown in Fig. 3 (as opposed to the inoperable position in phantom in Fig. 4) the assembly may serve as an armrest. That is, “[t]he bottom side 36 of the upper portion 30 is configured to be mated with the top side 38 of the lower portion 32 upon lowering of the upper portion 30 to its arm rest position” (column 6, lines 14-16).

At column 6, lines 6-13 describes the portions 30 and 32 in the position shown in phantom in Fig. 3 wherein it is stated that

the top side 38 of the lower portion 32 is contoured so as to receive a seated child (not shown) substantially within a depressed area 42. The lower portion 32 includes a back end 44 that is provided to give support to the child passenger's back. As best illustrated in broken lines, the bottom side 36 of the upper portion 30 includes a protruding portion 46 which provides chest support for the child passenger.

Thus, the assembly 12 of Maule is convertible to and from an armrest (top side 35 of upper portion 30) and a baby seat (top side 38 of the lower portion 32). The assembly (when on the front seat as shown in Fig. 3) is either the armrest with top side 35 exposed for use as an armrest or with top side 38 exposed for use as a baby seat.

The 35 U.S.C. §103 Rejection of Claims 1-17

For the reasons that follow it is evident that Gignac et al. and Maule, taken individually or together, do not teach or suggest the limitations of appellant's Claims 1-17.

Claim 1

In the rejection of claim 1 it is stated that Gignac et al.

fails to show the use of a juvenile seat comprising a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall having a cavity facing outwardly away from the seating surface. (Office action, page 4, lines 1-6).

Thereafter it is stated that

Maule teaches the use of a juvenile seat comprising a base (12) adapted to be placed on a vehicle seat (22) and having a front, a rear (44), opposite sides and a seating surface (42) between the sides to receive an occupant, the base having on at least one of the sides, an upstanding side wall (32) having a cavity (42) facing outwardly away from the seating surface (office action, page 4, lines 1-6). Its obvious to one of ordinary skill in the art at the time of the invention to modify the cup holder with a juvenile seat adapted to be place on the vehicle seat at taught by Maule, in order for the child to be seated properly in a vehicle. (Office action, page 4, lines 6-13).

The office action does not explain, and it is not evident, how the cup holder of Gignac et al. could be modified with a juvenile seat as taught by Maule. In order for Gignac et al's armrest to become Maule's baby seat one would have to cut Gignac et al's armrest generally horizontally to provide the contoured top side 38 of lower portion 32 of Maule and add pivot 34 to hingedly couple the sections together. This would completely destroy the container holder 32 in Gignac et al. and the mechanism that makes it work. A proposed modification of a prior art device that would render the prior art device unsatisfactory for its intended purpose is improper.¹ At the very least, modification of Gignac et al's arm rest to convert to a baby seat would alter the operation of the cupholder in Gignac et al. It is well settled that if the proposed modification of the prior art would change the principle of operation of the prior art invention then the teachings of the references are not sufficient to render the claims *prima facie* obvious.²

Even if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling.³ Maule's disclosure of a baby seat is not enabling for several reasons. The baby's back support 44 does not cover the entire spinal area of the baby as is seen in Fig. 7 of Maule. A rear end impact in the vehicle carrying the baby could result in a back injury to the baby. Side support for the baby is likewise not sufficiently safe to meet minimum safety standards. Providing proper safety belts in the configuration shown in Maule's Figs. 3-4 and 7-8 is also lacking. For example, how are the child's shoulders secured in a collision? The answers to these safety issues are not found in, or obvious from, Maule. The recess in the seat behind the child is clearly a hazard in that it does not provide the requisite support. The baby seat described in Maule is unsafe at least in rear-end and side collisions and

¹ See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

² *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

³ See *In re Donohue*, 226 USPQ 619, 621, (Fed. Cir. 1985).

for these reasons Maule's disclosure is non-enabling of a juvenile vehicle seat. Accordingly, Maule is not prior art with respect to the present claimed subject matter.

In claim 1 the base is described as "having a front, a rear, opposite sides...[and] having, on at least one of the sides, an upstanding side wall having a cavity...." The cup holder of claim 1 is recited as being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity...." Maule has no cup holder. Gignac et al does not have a cup holder which extends into a cavity in an upstanding side wall. In Gignac et al the cup holder is in the front, not a side. Accordingly, Gignac et al and Maule, taken alone or together do not teach or suggest the limitations of claim 1.

The attempt to combine the cupholder of Gignac et al. with the baby seat configuration of Maule is motivated by hindsight using the appellant's disclosure as a blueprint to attempt to reconstruct the claimed invention from the isolated teachings of the prior art. Both Gignac et al and Maule have arm rests, but there is nothing in either that would suggest combining the features of one into the other as this would destroy the features of the other. One of ordinary skill in the art would not have tried to use the baby seat configuration of Maule in Gignac et al as this would destroy the cupholder configuration in Gignac et al. Hindsight reconstruction is the motivation for the rejection and such is improper.⁴

In the present case, the examiner has failed to advance any factual basis to support the conclusion that it would have been obvious to one of ordinary skill in the art to modify the cupholder and arm rest of Gignac et al in the manner proposed. Accordingly, the office action does not establish prima facie case of obviousness with respect to claim 1.

For all of the above reasons, the rejection of claim 1 is improper and should be reversed.

Claim 2

The following claim 1 arguments are also applicable to Claim 2 and incorporated herein by this reference, but for purposes of brevity are not further repeated; the argument that the proposed modification would render the prior art device unsatisfactory for its intended purpose; the argument that the proposed modification would change the principle of operation of the prior art invention; the argument that the proposed modification is motivated by improper hindsight; the argument that Maule is non-enabling; the argument that the proposed modification does not

⁴ See, e.g., *Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

teach or suggest a cup holder that extends into a cavity in an upstanding side wall; the argument that there is no motivation to combine Maule and Gignac et al; and that the office action fails to advance any factual basis to support the conclusion of obviousness.

In addition, Claim 2 states the base provides first and second posts extending into the cavity. The office action argues in Gignac et al. “the base provides first & second posts (88) extending into the cavity” (page 5, lines 2-3). In Gignac et al. it is stated:

A pair of tabs 88 extend outwardly from opposing sides of the member 82 for engaging an inner surface groove or track 86 in the inner surface 38 of side walls 25, 27 of the housing 12. The pair of opposing longitudinal grooves or tracks 86 receive the tabs 88 for slideably guiding the member 82 therein. (Column 3, line 66 to column 4, line 3).

Gignac et al.’s tabs 88 are not “posts” are not in a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant as recited in claim 2. Maule does not make up for this deficiency in Gignac et al.

For all of the above reasons, the rejection of claim 2 is improper and should be reversed.

Claim 3

Claim 3 is dependent from Claim 2 and further requires the shell includes first and second connectors, each connector being formed to include a post opening to receive one of the posts, the connectors pivoting about the posts when the cup holder is moved between the closed and the opened positions.

The rejection in describing Gignac et al with respect to Claim 3 first identifies connectors 90 and posts 88 in Gignac et al and then states “the connectors pivoting about the posts....” This statement in the rejection is not supported by any language in Gignac et al.’s specification. There is no pivotal connection between Gignac et al’s arms 90 and tabs 88. The above-quoted description in the office action parrots language from appellant’s Claim 3 without explaining where in Gignac et al. there are post openings and other structure as recited in appellant’s Claim 3. Gignac et al. does not disclose the structure recited in Claim 3 and for this reason, as well as the reasons noted above with respect to Claim 2, the rejection is improper. Maule does not make up for this deficiency in Gignac et al.

Claim 4

The following claim 1 arguments are also applicable to Claim 4 and incorporated herein by this reference, but for purposes of brevity are not further repeated; the argument that the proposed modification would render the prior art device unsatisfactory for its intended purpose; the argument that the proposed modification would change the principle of operation of the prior art invention; the argument that the proposed modification is motivated by improper hindsight; the argument that Maule is non-enabling; the argument that the proposed modification does not teach or suggest a cup holder that extends into a cavity in an upstanding side wall; and that the office action fails to advance any factual basis to support the conclusion of obviousness.

In addition, Claim 4 states the upstanding side wall has a convex shape, and the outer shell surface cooperates with the side wall to continue the convex shape of the side wall to form a smooth convex shape when the cup holder is in the closed position. Gignac et al does not have these features. Gignac et al does not have a base having a front, a rear, opposite sides and a seating surface, much less a base sidewall of convex shape with a cup holder as recited in claim 4. Maule does not make up for this deficiency in Gignac et al.

For all of the above reasons, the rejection of claim 4 is improper and should be reversed.

Claim 7

The following claim 1 arguments are also applicable to Claim 7 and incorporated herein by this reference, but for purposes of brevity are not further repeated; the argument that the proposed modification would render the prior art device unsatisfactory for its intended purpose; the argument that the proposed modification would change the principle of operation of the prior art invention; the argument that the proposed modification is motivated by improper hindsight; the argument that Maule is non-enabling; the argument that the proposed modification does not teach or suggest a cup holder that extends into a cavity in an upstanding side wall; and that the office action fails to advance any factual basis to support the conclusion of obviousness.

Claim 7 further requires the base includes an upstanding side wall having an inwardly facing wall and an outwardly facing wall, and the cavity is formed in the outwardly facing wall. Inwardly facing wall 24 and outwardly facing wall 26 are shown in appellant's Figs. 1 and 2 and described at page 3 of the specification.

The rejection alleges that Gignac et al has the inwardly facing wall and outwardly facing wall as recited in Claim 7 but there is no explanation in the rejection of where in Gignac et al

such structure is disclosed and such is not evident. Accordingly, the rejection does not combine the references to provide an inwardly facing wall and an outwardly facing wall as recited in Claim 7. For this reason, as well as the reasons noted above with respect to Claim 6, the rejection of Claim 7 is improper.

Claim 8

The following claim 1 arguments are also applicable to Claim 8 and incorporated herein by this reference, but for purposes of brevity are not further repeated; the argument that the proposed modification would render the prior art device unsatisfactory for its intended purpose; the argument that the proposed modification would change the principle of operation of the prior art invention; the argument that the proposed modification is motivated by improper hindsight; the argument that Maule is non-enabling; the argument that the proposed modification does not teach or suggest a cup holder that extends into a cavity in an upstanding side wall; and that the office action fails to advance any factual basis to support the conclusion of obviousness.

Claim 8 is directed to a juvenile seat comprising a base adapted to be placed on a vehicle seat and including a front, a rear, and opposite sides, the base being formed to include a cavity and a cup holder... coupled to the base to pivot between a closed position... and an opened position... and wherein one of the base or the cup holder includes a post and the other of the base or the side wall includes a post opening to receive the post to permit pivoting movement of the cup holder relative to the base.

The final rejection does not specifically address Claim 8 (except in the cover sheet, PTOL-326). For the purpose of this appeal it is assumed that, like the rejection of claims 1-7 and 9-17, claim 8 is rejected over a combination of Gignac et al in view of Maule. In Gignac et al. the disclosed linkage arms 90 and associated structure does not have a post, post opening, cup holder and side wall as recited in Claim 8. For this reason and because Gignac et al. does not disclose the other features (e.g., a juvenile seat comprising a base adapted to be placed on a vehicle seat and a cupholder), Gignac et al.'s armrest is not a disclosure of the elements recited in Claim 8. Nothing in Maule would have made up for this deficiency. Accordingly, the rejection of Claim 8 is improper.

Claim 9

The following claim 1 arguments are also applicable to Claim 9 and incorporated herein by this reference, but for purposes of brevity are not further repeated; the argument that the

the argument that the proposed modification would change the principle of operation of the prior art invention; the argument that the proposed modification is motivated by improper hindsight; the argument that Maule is non-enabling; and that the office action fails to advance any factual basis to support the conclusion of obviousness.

Claim 9 is directed to a juvenile seat comprising a base adapted to be placed on a vehicle seat and including a front, a rear, and opposite sides, the base being formed to include a cavity and a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position wherein the cup retainer is positioned in the cavity and an opened position wherein the cup retainer extends from the base and faces upwardly and wherein the base includes an upstanding side wall having an outwardly facing wall, the outwardly facing wall including opposing interior walls extending toward the other side of the base, each interior wall including a post extending into the cavity, the cup holder being pivotably coupled to the posts.

The rejection asserts that Gignac et al has “each interior wall including a post extending into the cavity, the cup holder being pivotably coupled to the posts” as recited in claim 9, but does not specify what specific structure in Gignac et al. meets these limitations. It is apparent that these limitations are not taught or suggested in Gignac et al. There is no such interior wall in Gignac nor an interior wall with a post extending into the cavity as required by Claim 9. There is also no outwardly facing wall including opposing interior walls extending toward the other side of the base in Gignac et al and no such structure in Maule. Accordingly, the rejection of Claim 9 is improper.

Claim 10

Claim 10 is dependent from Claim 9 and further provides the cup holder includes first and second connectors, each connector having a post opening to receive one of the posts, the posts defining a pivot axis about which the cup holder pivots.

The rejection asserts that Gignac et al has the limitations recited in claim 10, but does not specify what specific structure in Gignac et al. meets these limitations. It is evident that Gignac et al. does not provide each connectors as recited in Claim 10 and for this reason, as well as the reasons noted above with respect to Claim 9, the rejection is improper.

Claim 11

The following claim 1 arguments are also applicable to Claim 11 and incorporated herein by this reference, but for purposes of brevity are not further repeated; the argument that the proposed modification would render the prior art device unsatisfactory for its intended purpose; the argument that the proposed modification would change the principle of operation of the prior art invention; the argument that the proposed modification is motivated by improper hindsight; the argument that Maule is non-enabling; and that the office action fails to advance any factual basis to support the conclusion of obviousness.

Claim 11 is directed to a juvenile booster seat adapted to be placed on a vehicle seat comprising a front, opposite sides, a seating surface between the sides, and a back, and a cup holder having a shell and a cup retainer coupled to the shell, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position placing the shell alongside said one of the sides of the booster seat and preventing access to the cup retainer and an opened position permitting access to the cup retainer.

The rejection asserts that Gignac et al has the limitations recited in claim 11, but does not specify what specific structure in Gignac et al. meets these limitations. It is evident that Gignac et al. does not provide a closed position placing the shell alongside said one of the sides of the booster seat as recited in Claim 11 and for this reason, as well as the reasons noted above, the rejection is improper.

Claim 12

Claim 12 is dependent from Claim 11 and further provides the one side comprises a generally inwardly facing wall and a generally outwardly facing wall, the outwardly facing wall having a cavity therein to receive at least a portion of the cup retainer in the closed position.

The rejection asserts that Gignac et al has the limitations recited in claim 12, but does not specify what specific structure in Gignac et al. meets these limitations. It is evident that Gignac et al. does not provide the one side comprises a generally inwardly facing wall and a generally outwardly facing wall, the outwardly facing wall having a cavity therein to receive at least a portion of the cup retainer in the closed position as recited in Claim 12 and for this reason, as well as the reasons noted above with respect to claim 11, the rejection is improper.

Claim 15

The Final Rejection, in the penultimate line of page 3 and continuing to line 4 of page 4, states:

[i]n regards to Claims 15-16, further comprising the shell including a first hinged portion and the side the cup holder is coupled to include [sic, includes] a second hinged portion, the coupling between the cup holder and the one of the sides being provided by the hinged portions; the shell includes an upper portion and a lower portion and when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position.

Notwithstanding that the above language argues that Gignac et al. discloses the claimed limitations, Gignac et al.'s hinge 60 is not attached to a side and there is no side with a second hinged portion. As expressed above, Gignac et al. does not disclose a juvenile booster seat adapted to be placed on a vehicle seat much less a front, opposite sides, a seating surface between the sides, and a back, or the cup holder, all as recited in Claim 15. Reversal of the rejection of Claim 15 is requested.

Claim 16

Claim 16 is dependent from Claim 15 which provides wherein the shell includes an upper portion and a lower portion, and when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position. This is described in appellant's specification at, for example, page 4, lines 9-11.

Claim 16 is allowable for the reasons expressed above with respect to Claim 15 and additionally because Gignac et al. does not provide structure so that when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position. In Gignac et al. it is stated that:

[d]epression of the actuating member 65 disengages it from the notch 66 allowing the storage means 30 to open. The storage means 30 also includes pivot control means 70 for biasing the storage means 30 in the open position whereby upon release of the latch means 64, the storage means 30 pivots from the closed position to the open position. The control means 70 includes a spring loaded and dampened tracking mechanism for controlling movement of the pivoting motion. The mechanism 70 is of the type parallel link tracking mechanism. (Column 3, lines 45-56).

Hence, Gignac et al. does not disclose the structure recited in Claim 16 and for this reason, as well as the reasons noted above with respect to Claim 15, the rejection of Claim 16 is improper.

Claim 17

Claim 17 is directed to a juvenile booster seat adapted to be placed on a vehicle seat comprising a front, opposite sides, a seating surface between the sides, and a back, and a cup holder having a shell and a cup retainer, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer, wherein the shell includes an outer shell surface and an inner shell surface, and the side to which the cup holder is coupled includes a support edge to contact a portion of the outer shell surface to support the cup holder in the opened position, the support edge having a shape to match the shape of the portion of the outer shell surface so contacted.

Page 4, lines 12-19 and Fig 3. of appellant's disclosure describes the support edge and outer shell surface support recited in Claim 17. Gignac et al. does not disclose the support edge and outer shell surface support, or a juvenile booster seat adapted to be placed on a vehicle seat, a front, opposite sides, a seating surface between the sides, and a back, or the cup holder, all as recited in Claim 17. Reversal of the rejection of Claim 17 is requested.

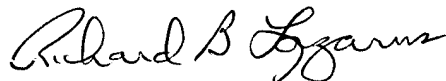
Conclusion of Argument

From the above, it is readily apparent that Gignac et al. does not anticipate Claims 1-17 and the Rejection is in error. The Rejection provides conclusions without proper reasons explaining the conclusions. Rather, the Rejection action just summarily rejects all of the claims without adequate explanation. For the foregoing reasons, the appellant, respectfully, requests that the rejection of Claims 1-17 be reversed and the application with Claims 1-17 be allowed.

The 37 CFR 1.17(c) fee for an appeal brief was filed with the brief filed November 12, 2003.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20341/68796).

Respectfully submitted,
BARNES & THORNBURG



Richard B. Lazarus
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RBL/sld

Attachment:
Appendix (Claims 1-17)

APPENDIX

CLAIMS 1-17

1. A juvenile seat comprising
a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant, the base having, on at least one of the sides, an upstanding side wall having a cavity facing outwardly away from the seating surface,
a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base and an opened position extending from the base in which the cup retainer is open upwardly and the outer surface is separated from the upstanding side wall.
2. A juvenile seat comprising
a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant, the base having, on at least one of the sides, an upstanding side wall having a cavity facing outwardly away from the seating surface,
a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and an opened position extending from the base in which the cup retainer is open upwardly, wherein the base provides first and second posts extending into the cavity.
3. The juvenile seat of claim 2, wherein the shell includes first and second connectors, each connector being formed to include a post opening to receive one of the posts, the connectors pivoting about the posts when the cup holder is moved between the closed and the opened positions.

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4. A juvenile seat comprising

a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant, the base having, on at least one of the sides, an upstanding side wall having a cavity facing outwardly away from the seating surface,

a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and an opened position extending from the base in which the cup retainer is open upwardly, wherein the outer shell surface has a convex shape, the upstanding side wall has a convex shape, and the outer shell surface cooperates with the side wall to continue the convex shape of the side wall to form a smooth convex shape when the cup holder is in the closed position.

5. A juvenile seat comprising

a base adapted to be placed on a vehicle seat and having a front, a rear, opposite sides and a seating surface between the sides to receive an occupant, the base having, on at least one of the sides, an upstanding side wall having a cavity facing outwardly away from the seating surface,

a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position in which the cup retainer extends into the cavity and an opened position extending from the base in which the cup retainer is open upwardly, wherein at least one of the base or the cup holder includes a detent to engage a recess provided by the other of the cup holder or the base to prevent free movement of the cup holder from the closed position.

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6. A juvenile seat comprising
a base adapted to be placed on a vehicle seat and including a front, a rear, and opposite sides, the base being formed to include a cavity,
a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position wherein the cup retainer is positioned in the cavity and the outer surface merges with the upstanding side wall to form an exterior surface of the base and an opened position wherein the cup retainer extends from the base and faces upwardly and the outer surface is separated from the upstanding side wall.
7. The juvenile seat of claim 6, wherein the base includes an upstanding side wall having an inwardly facing wall and an outwardly facing wall, and the cavity is formed in the outwardly facing wall.
8. A juvenile seat comprising
a base adapted to be placed on a vehicle seat and including a front, a rear, and opposite sides, the base being formed to include a cavity,
a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position wherein the cup retainer is positioned in the cavity and an opened position wherein the cup retainer extends from the base and faces upwardly and wherein one of the base or the cup holder includes a post and the other of the base or the side wall includes a post opening to receive the post to permit pivoting movement of the cup holder relative to the base.

9. A juvenile seat comprising
a base adapted to be placed on a vehicle seat and including a front, a rear, and opposite sides, the base being formed to include a cavity,
a cup holder comprising a shell having an inner surface providing a cup retainer and an outer surface, the cup holder being coupled to the base to pivot between a closed position wherein the cup retainer is positioned in the cavity and an opened position wherein the cup retainer extends from the base and faces upwardly and wherein the base includes an upstanding side wall having an outwardly facing wall, the outwardly facing wall including opposing interior walls extending toward the other side of the base, each interior wall including a post extending into the cavity, the cup holder being pivotably coupled to the posts.
10. The juvenile seat of claim 9, wherein the cup holder includes first and second connectors, each connector having a post opening to receive one of the posts, the posts defining a pivot axis about which the cup holder pivots.
11. A juvenile booster seat adapted to be placed on a vehicle seat comprising
a front, opposite sides, a seating surface between the sides, and a back, and
a cup holder having a shell and a cup retainer coupled to the shell, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position placing the shell alongside said one of the sides of the booster seat and preventing access to the cup retainer and an opened position permitting access to the cup retainer.
12. The juvenile booster seat of claim 11, wherein the one side comprises a generally inwardly facing wall and a generally outwardly facing wall, the outwardly facing wall having a cavity therein to receive at least a portion of the cup retainer in the closed position.
13. The juvenile booster seat of claim 12, wherein the shell includes an outer surface and an inner surface providing the cup retainer, the cup retainer being positioned in the cavity when the cup holder is in the closed position.
14. The juvenile booster seat of claim 13, wherein the outwardly facing wall is convex, and the outer surface is continuous with the outwardly facing wall when the cup holder is in the closed position.

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15. A juvenile booster seat adapted to be placed on a vehicle seat comprising a front, opposite sides, a seating surface between the sides, and a back, and a cup holder having a shell and a cup retainer, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer, wherein the shell includes a first hinge portion, and the side to which the cup holder is coupled includes a second hinge portion, the coupling between the cup holder and the one of the sides being provided by the hinge portions.

16. The juvenile booster seat of claim 11, wherein the shell includes an upper portion and a lower portion, and when the user applies a force to the lower portion of the shell, the cup holder pivots toward the opened position.

17. A juvenile booster seat adapted to be placed on a vehicle seat comprising a front, opposite sides, a seating surface between the sides, and a back, and a cup holder having a shell and a cup retainer, the cup holder being coupled to one of the sides of the booster seat to pivot between a closed position preventing access to the cup retainer and an opened position permitting access to the cup retainer, wherein the shell includes an outer shell surface and an inner shell surface, and the side to which the cup holder is coupled includes a support edge to contact a portion of the outer shell surface to support the cup holder in the opened position, the support edge having a shape to match the shape of the portion of the outer shell surface so contacted.